APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,483

ROBERT W. HICKS, *Appellant*

v.

ARTHUR E. SUMMERFIELD, Postmaster General of the United States, and PHILIP YOUNG, *et al.*, United States Civil Service Commission, *Appellee*

Appeal from the United States District Court for the District of Columbia

Decided November 13, 1958

Mr. Richard A. Mehler, with whom *Messrs. George J. Goldsborough, Jr.*, and *Charles P. Hovis* were on the brief, for appellant.

Mr. Howard E. Shapiro, Attorney, Department of Justice, with whom *Assistant Attorney General Doub* and *Messrs. Oliver Gasch*, United States Attorney, and *Morton Hollander*, Attorney, Department of Justice, were on the brief, for appellee. *Mr. Carl W. Belcher*, Assistant United States Attorney, also entered an appearance for appellees.

Before FAHY, DANAHER and BASTIAN, Circuit Judges.

BASTIAN, *Circuit Judge:* Appellant (plaintiff) appeals from an order of the District Court dismissing his suit against the Postmaster General and the Civil Service Commissioners. Appellant sought reinstatement to his employment with the United States Post Office Department and asked that the court issue a preliminary and permanent mandatory injunction requiring appellees (defendants) to restore appellant to his employment in the United States Post Office Department, retroactive to the date of

his dismissal. Appellant was dismissed by a Notification of Personnel Action emanating from the Post Office Department, the grounds stated therein being:

> "For false and misleading statements in your civil service papers concerning separations from previous employments and experience, and other evidence of unsuitability for Government employment."

It is conceded that the Civil Service Commission directed the removal action complained of.

While the suit was pending in the District Court, two of the defendant Civil Service Commissioners resigned from the Commission and their successors were not substituted as parties defendant within six months after taking oath of office, as required by FED.R.CIV.P. 25(d).[1] On motion, based on the failure to substitute indispensable parties, the District Court dismissed the complaint but without prejudice. Appellant contends that the complaint should not have been dismissed because the members of the Civil Service Commission were not in fact indispensable parties.

We believe that under the circumstances of this case the Civil Service Commissioners were indispensable parties to the suit and, they not being before the court, the action was properly dismissed. *Cf. Blackmar* v. *Guerre*, 342 U.S. 512 (1952); *Benenati* v. *Young*, 95 U.S.App.D.C. 120, 220 F.2d 383 (1955).

Affirmed.

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[1] "When an officer of the United States, or of the District of Columbia, the Canal Zone, a territory, an insular possession, a state, county, city, or other governmental agency, is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor, if within 6 months after the successor takes office it is satisfactorily shown to the court that there is a substantial need for so continuing and maintaining it. . . ."

FED.R.CIV.P. 6(b) provides that the court may not extend the time for taking action under Rule 25(d).

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1958

C. A. 4031-56

No. 14,483

ROBERT W. HICKS, *Appellant*,

v.

ARTHUR E. SUMMERFIELD, Postmaster General of the United States, and PHILIP YOUNG, et al., United States Civil Service Commission, *Appellees*.

Appeal from the United States District Court for the District of Columbia

Before: FAHY, DANAHER and BASTIAN, Circuit Judges.

Judgment

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof it is ordered and adjudged by this Court that the order . . . of the District Court appealed from in this cause be, and it is hereby affirmed.

PER CIRCUIT JUDGE BASTIAN

Dated: November 13, 1958

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1958

No. 14,483

Filed Dec. 17, 1958

ROBERT W. HICKS, *Appellant*,

v.

ARTHUR E. SUMMERFIELD, Postmaster General of the United States, and PHILIP YOUNG, *et al.*, United States Civil Service Commission, *Appellee*.

Before: PRETTYMAN, *Chief Judge*, EDGERTON, WILBUR K. MILLER, BAZELON, FAHY, WASHINGTON, DANAHER, BASTIAN and BURGER, *Circuit Judges, in Chambers*.

Order

Upon consideration of appellant's petition for a rehearing in banc, it is

ORDERED by the court that the petition for rehearing in banc is denied.

Dated: December 17, 1958

Per Curiam.